

A Plan to Address the Humanitarian and Refugee Crisis on the Southern Border and in Central America

There is a humanitarian and refugee crisis in the U.S. and Central American region. Tens of thousands of young people and families are fleeing violence in Central America. Several countries in the region suffer murder rates seldom seen outside of conflict zones, and Honduras has the highest per capita homicide rate in the world. Many of Central America's young people have witnessed unspeakable horrors and been the victims of violence and abuse. In the face of this crisis, much of the Western Hemisphere is wrestling with the challenge of addressing both the short-term and long-term needs of the children and families. There is not a simple and swift solution and it is neither strictly an immigration or foreign policy matter. This crisis is a complex human tragedy and needs both short-term and long-term attention. We must prioritize the root causes of this crisis, while dealing effectively with the current humanitarian needs of the children.

Children are fleeing violence rather than being pulled toward promises of immigration status in the United States. Interviewing more than 400 unaccompanied minors, UN High Commissioner for Refugees (UNHCR) researchers found that many of them had fled forcible "join or die" gang recruitment or gang threats against themselves and their families. According to UNHCR data, 58 percent of unaccompanied minors may have a viable claim to refugee protections under international law. The United Nations has found that asylum requests by Hondurans, Salvadorans and Guatemalans seeking refuge in their neighboring countries of Mexico, Panama, Nicaragua, Costa Rica and Belize have skyrocketed by 712 percent since 2009. Children are also fleeing to safe havens within their own countries. The sending nations of El Salvador, Honduras and Guatemala are experiencing significant numbers of their own people being internally displaced. In contrast to the seriousness of the survey results regarding asylum, only 9 children out of 404 reported coming to the U.S. due to U.S. immigration policies. Moreover, recent arrivals would not qualify for Deferred Action for Childhood Arrivals (DACA), which requires eligible individuals to have arrived in the U.S. no later than June 15, 2007, nor the Senate bill's path to citizenship, which requires eligible individuals to have arrived no later than December 31, 2011. Clearly, extreme violence and a fear for individual safety in the region is the primary driver of this exodus.

The humanitarian crisis is complicated by the fact that many children coming to the United States are very young and many are girls. Almost half the children coming to the United States as unaccompanied minors are girls and many are very young. Many of these children suffer from sexual assaults as they journey to the United States. Very sadly, it has become common for children as young as 4-10 years old to be picked up and arrested by the U.S. Border Patrol. There are reports of pre-school age children, younger than five years of age being smuggled into the United States.

To address this crisis, the Administration should continue to focus on anti-smuggling efforts and programs to combat criminal activity, and should work with the governments of Central America to increase their efforts to combat violence and trafficking:

- **The Administration should continue to crack down on the smugglers and traffickers crossing the border.** Criminal syndicates are smuggling many of these children across the border. Often, the children and families are victimized by these criminals, forced to pay ransom, raped or subjected to other abuse. The Administration has a robust \$17 billion per

year enforcement budget. That's what we spend annually- a budget larger than the other federal law enforcement budgets like the FBI, ATF, and DEA combined. We should focus those resources on cracking down on the smugglers and traffickers who are profiting from the violence and instability in these nations and harming children in the process.

- **The Administration should continue to improve intelligence-gathering activities to combat cross-border smuggling.** Smugglers are sophisticated criminal operatives and US intelligence agencies work hard to monitor smuggling routes and methods. These efforts deserve as much support as possible to disrupt smuggling rings. It is also critical to continue working with the Central American governments to ensure that they take action in their own countries to deter the exploitation of children. For example, funding for anti-gang units in countries like Honduras and security assistance is critically important.
- **The United States must continue to send a strong message that criminal activity will not be tolerated.** Criminals will be targeted and current U.S. immigration law bars serious criminals who pose a public safety risk from entering the United States.
- **Congress should increase funding for the Central American Regional Security Initiative (CARSI).** CARSI supports three main activities across seven different countries: narcotics interdiction and law enforcement, institutional capacity building, and violence prevention. Under CARSI, the State Department and the U.S. Agency for International Development (USAID) should place greater emphasis on strengthening police forces, court systems, and public prosecutors' offices in order to better respond to crime, violence, and illicit trafficking networks in the region. In its FY2015 request to Congress, the Obama Administration requested \$130 million for its seven-country CARSI strategy, a decrease of \$30 million over its FY2014 request. Congress should increase CARSI funding to \$230 million.
- **U.S. Southern Command should be appropriately resourced to conduct the intelligence, surveillance, and reconnaissance efforts needed to combat criminal activity and narcotics trafficking.** While the deployment of U.S. military assets and personnel rightfully prioritizes national security challenges in the Middle East and Central Asia, U.S. Southern Command (SOUTHCOM) is only sourced at five percent of the capacity it needs to carry out intelligence, surveillance, and reconnaissance (ISR) efforts crucial to disrupting illicit trafficking in and around Central America. As the lead federal institution for the detecting and monitoring of aerial and maritime trafficking of illicit drugs to the United States, SOUTHCOM must have access to the financial resources, as well as the maritime and aerial assets, it needs to carry out its mission.
- **Immigration reform is a critical part of the solution. S. 744, the Senate immigration reform bill, contains important border security measures, anti-smuggling legislation, anti-trafficking measures and other important provisions that should be enacted to help address criminal activity.** In addition, if reform is passed, long family waiting times for a visa would be reduced so the right individuals could get legal status faster—that would help families in which someone already has a green card but has been stuck in a backlog. Finally, the U.S. government should continue to be clear about the fact that there is no general legal protection for children fleeing to the United States under deferred action, and

they are not eligible for DACA or legalization under the Senate immigration reform bill. Certain children may qualify for asylum, trafficking visas or visas related to being abandoned or a victim of crime but it is likely that many of them will be repatriated to their home countries because they do not qualify for immigration relief.

The Administration should ensure that it meets its domestic and international legal requirements related to the treatment of children, refugees and asylum seekers:

- **Current U.S. law contains special protections for unaccompanied minors, trafficking victims and asylum seekers.** Unaccompanied minors cannot simply be returned to their home countries under current US law. These laws must be respected to ensure that the United States does not unknowingly return a child to violence and abuse. Children should have a full and meaningful opportunity to apply for asylum and other forms of relief for which they may be eligible. However, it is also important to ensure that the security of the United States is respected. For this reason, HHS has specific plans in place to work with unaccompanied children and the agency needs funding to follow its plans of housing children while they go through immigration proceedings. Regarding families, there are other programs such as alternatives to detention that can assist the United States in monitoring the whereabouts of families and ensure that they comply with the requirement that they appear before immigration court. These programs will help assure the security of the United States and ensure that people attend their immigration proceedings. All families and children who are released from custody are required to move forward with immigration proceedings. Some children may have relief under current immigration law and others may be returned to their home country after full proceedings that respect due process.
- **In order to comply with its legal requirements, HHS and other agencies need more funding and Congress should approve the Administration's request for more funding.** The Administration's request of an additional \$1.8 billion for FY 2015 should be approved. Funding is urgently needed to ensure the families and children are treated appropriately.
- **DHS and HHS should investigate and correct conditions of confinement.** While it may be necessary to hold children in custody for a very brief time period to process their information, arrange placement with families and screen them for vulnerabilities, children should not be held for long periods in detention under any circumstances. Children should be transferred as soon as possible to HHS facilities that are licensed to house children. Under several legal settlements, children being held for longer periods of time must have access to attorneys, law libraries, visitation, phones and other necessities.
- **The Administration should not bring back the heavily criticized family detention center system. Instead, it should expand alternatives to detention and improve screening and processing procedures.** In 2009, DHS stopped using the T. Don Hutto facility in Texas to detain families after a lawsuit about poor conditions. At Hutto, small children were held in conditions that were completely inappropriate, leading to a firestorm of criticism. The remaining detention bed spaces for families are at the Berks Family Residential Center, a more shelter-like facility in Pennsylvania. Traditional detention facilities, like Hutto, are wholly inappropriate for children and families. It would be

extremely costly and all but impossible to retrofit existing adult detention facilities to house this population. It would also be in violation of the law. Contrary to concerns at the time of Hutto's closing, family arrivals did not increase after Hutto was closed, demonstrating that the current influx of refugees including children has nothing to do with the family detention system. New ad hoc and poorly designed family detention facilities will not help to stem the tide of families coming to the United States.

- **DHS should redesign and expand alternatives to detention for families that are 96% effective in ensuring appearance at immigration proceedings.** The Intensive Supervision Appearance Program (ISAP), a program with a range of options that includes both intensive check-ins and ankle bracelets) have proven to be extremely effective in ensuring that people show up for immigration hearings. Community support programs also present an effective and more humane alternative to detention. Alternatives should be used more widely for families, and families should be considered for these programs before they are released as a condition of confinement. Alternatives are not a condition of custody—they are a form of custody. DHS should partner with community-based organizations to create new alternatives programs. In addition, for the program to work efficiently, the Department of Justice should also create an expedited alternatives docket to hear the cases in immigration court. The use of alternatives in this manner will save the government money. Congress should increase appropriations for alternatives to detention programs that consider individuals, including families, for the program prior to release.
- **Families should be processed through deportation proceedings under INA Sec. 240.** The immigration proceedings for families and children should protect due process. Families should not be placed in expedited proceedings and they should not be subject to proceedings that do not provide adequate due process such as stipulated orders of removal. These proceedings often do not provide adequate screening for credible fear and trafficking claims. Studies have shown that because of the high level of trauma experienced by women asylum seekers, it can take substantially longer for women to articulate an asylum claim. There are also particular requirements related to children including that children should not be subject to voluntary departure. Under the Perez-Funez injunction, prior to removal, DHS must give unaccompanied minors an advisal of rights as well as make efforts to contact a relative or close family member of the child, or actually document that such contact was made in the case of all children other than Mexicans and Canadians apprehended in the immediate vicinity of the border.
- **The Administration must ensure that children are released from Office of Refugee Resettlement (ORR) custody into safe environments—preferably to a family member, not to someone who might do them harm.** The Administration should ensure that individuals taking custody of children have filled out paperwork showing their identity prior to arriving at the detention facility. This will help to ensure that individuals seeking to reunite with children are who they say they are. The purpose is not to force the parent to prove his or her own status but instead to ensure that children are placed with actual relatives. The Administration should also ensure, either through enrollment in formal alternatives to detention programs or intensive post release follow-up services, that children and families who are released from detention are in safe situations and have the legal and other supports necessary to ensure their compliance with immigration proceedings.

- **CBP should contract with social workers and work collaboratively with social service agencies to provide assistance to children at Border Patrol stations.** Children as young as four years old require extensive childcare assistance. Many children require medical assistance and other special services. In addition, children need to be screened by individuals with child welfare expertise to determine whether they are unaccompanied and are informed of their legal rights. Currently, CBP short-term detention facilities are inadequate to meet these needs. The Administration has already begun working with private charities to provide some basic services. This effort should be expanded to provide as much humanitarian assistance as possible and social services must be present at every Border Patrol facility holding children.
- **Families and children in immigration proceedings need legal assistance.** Our immigration laws do not provide for a child to have an attorney or guardian appointed on their behalf. Small children are being put in front of judges with little to no assistance. No child, whatever age, should face immigration court alone. Current efforts to increase and expand pro bono efforts to provide legal assistance should be supported and expanded, including both appointed counsel and the facilitation of pro bono representation through the private sector. The provision of attorneys for these children would also make the system more efficient and effective, and ensure that more children stay within the system. Children with attorneys are more likely to appear for their court dates than children without, as they have help understanding the system and learning what relief they may or may not be eligible for. Child advocate or guardian ad litem programs are also critically important for the most vulnerable children. Know your rights presentations or Legal Orientation Presentation Programs (LOP) should be available in all detention facilities, including even short-term facilities. The recently announced program to provide legal assistance through Americorps is a good first step but it should not supplant funding for programs that provide other types of legal assistance.

In order to stabilize the situation in Central America and stem the flow of refugees and minors into the United States while ensuring that we don't face an even greater tragedy in the future, we must support peace, good governance, and economic and social development in Central America.

- **The State Department and USAID must work together to establish effective repatriation and reintegration programs for children being returned to their home countries.** The United States returns thousands of unaccompanied children to their home countries every year. These children receive little, if any, government assistance or social services upon return as they are typically returning to countries with little to no child welfare programming in place. In desperation, a large number decide to re-migrate, making the life threatening journey to the United States again. Helping these children return safely to their home countries and in a way that is sustainable can reduce this dangerous cycle of migration. State and USAID, in conjunction with HHS, the Attorney General, international organizations, and nongovernmental organizations in the United States with expertise on repatriation and reintegration, should create sustainable programs to ensure the safe and

sustainable repatriation and reintegration of unaccompanied children into their home countries.

- **State Department and USAID must develop a long-term strategy – that includes increased development budgets – to support sustainable growth, equitable development, good government, and competitiveness in the region.** The State Department and USAID should prioritize programs that foster a climate for sustainable growth and lead to economic opportunity for all citizens, including the most vulnerable populations – women, youth, minorities and impoverished individuals. These programs should address the underlying issues including the lack of access to higher education and employment training that perpetuates conditions of economic hardship and contributes to irregular migration to the United States. It should also address weak or corrupt governance that needs to do more to meet the basic needs of local populations.
- **The State Department must designate a high level coordinator, such as an Ambassador-at-Large for Children in Adversity, and establish an office to be the focal point for policy formulation and response to the humanitarian concerns facing children, such as those escaping violence in Central America.** The office must work with relevant State Department and USAID bureaus and the interagency to ensure that the United States government supports effective policies and programs for addressing the needs of these children. The Administration's National Action Plan for Children in Adversity should be codified to ensure proper alignment of resources, and mandate interagency coordination. To that end, assistance must be increased for programs in Honduras, El Salvador and Guatemala that strengthen child welfare and protection policies and programs, including supporting courts and law enforcement focused on protection of children. Enhanced support for health, education and nutrition interventions for children exposed to violence is also necessary.
- **Congress should pass the Western Hemisphere Drug Policy Commission Act.** This legislation would create an independent blue-ribbon commission to analyze United States policies targeting drug production and trafficking in the hemisphere. The Commission would also submit recommendations on how the U.S. can better work with partners in the region to better combat narcotics trafficking, address the effects of corruption and violence that accompany the drug trade, and mitigate the root causes that have allowed illicit trafficking to flourish in the region.
- **The Millennium Challenge Corporation should accelerate engagement in Central America.** The Millennium Challenge Corporation (MCC) must seek new opportunities to provide assistance that encourages countries to prioritize good governance, build democratic institutions, and invest in needed domestic infrastructure projects. MCC should move rapidly to address pending issues so that it can sign a second Compact with El Salvador, finalize discussions over a Threshold agreement with Guatemala, and effectively carry-out its new Threshold agreement with Honduras.